

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JIMMY J. CHILDS)

For Appellant: Philip A. Cain

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jimmy J. Childs against a proposed **assessment** of additional personal income tax and penalty in the total amount of \$3,994.11 for the year 1979.

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The issue for determination is whether appellant continued to be a resident of California in 1979 during his absence to play professional football for the St. Louis Cardinals.

Respondent received a copy of appellant's form w-2, "Wage and Tax Statement," for taxable year 1979 from appellant's employer, the St. Louis Football **Cardinals, Inc.** In checking its records, respondent was unable to locate a return from appellant for that year. Respondent sent a request to appellant that he **file** a return or indicate why one was not required.

Appellant's representative provided respondent with a copy of a nonresident Missouri return apparently filed by appellant for taxable year 1979. On that **return** appellant **reported** that his home address was in West Covina, California, that he was a nonresident of Missouri, and that he was a resident of California who was filing a return with California for 1979. The same return indicated that 46 percent of appellant's income had its source in Missouri. Based on the foregoing information, respondent issued a notice of proposed assessment against appellant, treating him as a California resident for taxable year 1979, and allowing him a credit for taxes paid to Missouri. Respondent also imposed a **penalty** for failure to file.

Appellant filed a protest, and respondent requested that he complete a residency questionnaire. On the completed questionnaire, appellant reported that his current address was in St. Louis, Missouri; that he had been a student in California during 1976 and 1977; and that he had spent four months in California and eight months in Missouri during each of the years 1978 and 1979, and three months in California and nine months in Missouri during 1980. Appellant also reported that he had held a valid California driver's license during his absences from California, had owned an automobile registered in Missouri, had maintained checking and savings accounts only in Missouri, had not owned a home in California during the period 1976 through 1980, and had not been registered to vote in either California or Missouri during 1979. After respondent received the above additional information, it affirmed its proposed assessment. This appeal followed.

In this appeal appellant indicates further that the football contract he signed in 1978 was for a period of three years, that he has a Missouri driver's

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license, that his friends, contacts and his fiancée all reside in the St..Louis area, and that he shares an apartment there with his fiancée. He also states that he spent a maximum of four months away from Missouri in 1979, and part of that time was spent in Hawaii. Appellant also declares that when he came to California during the off-season, he only visited his parents. He also indicated that his mail was directed to West Covina, California, only because his father acted as his business manager and resided in West Covina.

There appears to be no question that appellant was a domiciliary and resident of California prior to his signing the contract with the St. Louis Cardinals. The primary inquiry, then, is whether his absence from California during 1979 was for a temporary or transitory purpose. We conclude that it was.

The definition of resident status for income tax purposes is found in Revenue and Taxation Code section 17014. That section provides as follows:

(a) "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

* * *

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

In the Appeal of David J. and Amanda Broadhurst, decided by this board on April 5, 1976, we summarized the regulations and case law interpreting the phrase "temporary or transitory purpose" as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. [Citations.] The regulations also provide that the

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underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. [Citation.] The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protections from its laws and government. [Citation.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or **absence** from California is temporary or transitory in character. [Citation.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and the ownership of real property.. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. [Citation.]

Appellant's argument that he was a nonresident of California is tainted by his own admission, via his 1979 nonresident Missouri return, that he was a resident of California for the year in question. Although appellant maintains that his status as nonresident on that return was erroneous and that subsequent returns **indicated** appellant to be a resident of **Missouri**, nowhere is it mentioned that appellant amended or otherwise changed the 1979 Missouri return. In our view, this indicates appellant's choice to stand by his **Missouri** declaration of nonresident status, which was made under penalty of perjury. Beyond this, several of the arguments which appellant has advanced in contending that he was a resident of Missouri for 1979 lack factual substance. For example, appellant stated that he possessed a Missouri driver's license. However, he did not **specifically** state that he possessed it in 1979. Furthermore, appellant's residency questionnaire, while indicating the possession of a California driver's license throughout the period 1977-1980, mentioned nothing about possession of a Missouri license during any of that time. Appellant's reference to the Missouri driver's license is thus

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meaningless in regard to the question of residence in 1979. A similar insignificance attaches to appellant's statement that he shares an apartment in St. Louis, Missouri, with his fiancée, since no evidence shows that this circumstance existed in 1979. Even if such arrangement had existed during that time, its evidentiary value in support of appellant's position is diminished by appellant's practice of returning to California after the football season to stay with his parents. We do not believe this behavior to be consistent with the acquisition of a permanent place of residence in St. Louis, Missouri. Another of appellant's statements concerned some time said to have been spent in Hawaii. This is inconsistent with the statement on the residency questionnaire where no mention is made of any time spent in Hawaii. In any event, a trip of that kind is obviously temporary in nature and adds nothing to the claim that appellant's stay in Missouri was for other than a temporary or transitory purpose. (See Appeal of Brent L. Berry, Cal. St. Bd. of Equal., March 22, 1971.)

On the basis of the foregoing, it is our opinion that no substantive evidence was presented to show appellant had established permanent connections with Missouri such as to make him a resident thereof in 1979. Consequently, for that year appellant continued to be a resident of California during his absence to play professional football for the St. Louis Cardinals. Respondent's determination accordingly was proper and must be upheld. The penalty for failure to file must also be upheld, since appellant did not show that he filed a return or paid his tax liability for the year in question. (Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977.)

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O R D E R

Pursuant to the views expressed in the opinion of the board. on file in this proceeding, and good cause appearing **therefor**,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section **18595** of the Revenue and Taxation **Code**, **that** the action of the Franchise Tax Board on the protest of Jimmy J. Childs against a proposed assessment of additional personal income tax and penalty in the **total** amount of **\$3,994.11** for the year 1979, be and the same is hereby sustained,

Done at Sacramento, California, this **21st** day of June , **1983**, by the State Board of Equalization. with Board Members Mr. **Bennett**, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

William M. Bennett , Chairman
Conway H. Collis - - , Member
Ernest I. Dronenburg, Jr. , Member
Richard Nevins - , Member
_____, Member